

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION**

**HENRY B. BERROCAL, HUMANITY
FOR WISDOM COMMUNITY CEN-
TER HEALTH AND HUMAN SER-
VICES, ELEGANT AND HAPPY LLC,
CYCLE OF MANAGEMENT LLC,**

Case No. SA-23-CV-01319-JKP

Plaintiffs,

v.

**SAN ANTONIO POLICE DEPART-
MENT HEADQUARTERS, CHIEF OF
POLICE WILLIAM MCMANUS, OF-
FICER CAPACITY; LEON VALLEY
POLICE DEPARTMENT, DAVID
GONZALEZ, OFFICER AND INDIV-
IDUAL CAPACITY; BEXAR
COUNTY ADULT DETENTION CEN-
TER, JAVIER SALAZAR, INDIVIDU-
AL AND OFFICIAL CAPACITY;
DISTRICT ATTORNEY, JOE GON-
ZALEZ, INDIVIDUAL AND OFFI-
CIAL CAPACITY; MUNICIPAL
COURT COURT, FREDERICK P.
GARCIAJR., OFFICIAL AND INDIV-
IDUAL CAPACITY; SAN ANTONIO
DEVELOPMENT SERVICE, PE, CBO,
DIRECTOR MICHAEL SHANNON,
INDIVIDUAL AND OFFICER CAPAC-
ITY; SAN ANTONIO IMPOUND FA-
CILITY, MAYOR RON NIRENBERG,
INDIVIDUAL AND OFFICIAL CA-
PACITY; ALANIS WRECKER SER-
VICE, LLC, GREAT NORTHWEST
COMMUNITY CENTER, (HOA AS-
SOCIATION); PINKEY
CLINKSCALES, DEED RE-
STRICTIONS OFFICER; GOOGLE
FIBER LLC, JAMES M GARCIA,
GILBERT MACIAS,**

Defendants.

MEMORANDUM OPINION AND ORDER

Before the Court is Defendants Great Northwest Community Improvement Association, Inc., Pinkey Clinkscalses, Leon Valley Police Department, Leon Valley Police Chief David Gonzalez, District Attorney Joe Gonzales, and Google Fiber LLC's Motions to Dismiss. *ECF Nos. 52, 53, 59, 67*. Plaintiffs Henry B. Berrocal, proceeding pro se, Humanity for Wisdom Community Center Health and Human Services, Elegant and Happy LLC, and Cycle of Management LLC¹ did not respond after being given two additional opportunities. Upon consideration, the Court concludes the Motions to Dismiss shall be **GRANTED** as unopposed.

Legal Standard

"A response to a dispositive motion shall be filed not later than 14 days after the filing of the motion. . . . If there is no response filed within the time period prescribed by this rule, the court may grant the motion as unopposed." W.D. Tex. R. CV-7(d)(2) (2021). Although the moving party bears the burden to demonstrate a bar to relief under Federal Rule 12(b)(6), this Court may apply this terminal Local Rule 7(d)(2) to dispositive motions when no response is filed. *Suarez v. Ocwen Loan Servicing, LLC*, No. 5:15-CV-664-DAE, 2015 WL 7076674, at *2 (W.D. Tex. Nov. 12, 2015); *Hernandez v. Deutsche Bank Tr. Co.*, No. EP-12-CV-282-DB, 2012 WL 12887898, at *2 (W.D. Tex. Aug. 21, 2012). Even so, at its discretion, a Court may address the

¹ Although Berrocal proceeds pro se, these named LLC Plaintiffs have not formally appeared, and furthermore, cannot appear in federal court without an attorney. *Memon v. Allied Domesq QSR*, 385 F.3d 871, 873 (5th Cir. 2004). Consequently, this Court will only consider Berrocal as a valid Plaintiff.

substantive merits of a dispositive motion to which no response was filed “in the interests of thoroughness.” *Suarez*, 2015 WL 7076674, at *2.

A Complaint should only be dismissed under Federal Rule 12(b)(6) after affording every opportunity for the plaintiff to state a claim upon which relief can be granted. *Hitt v. City of Pasadena*, 561 F.2d 606, 608–09 (5th Cir. 1977); *see also McClellon v. Lone Star Gas Co.*, 66 F.3d 98, 103 (5th Cir. 1995); *Hart v. Bayer Corp.*, 199 F.3d 239, 248 n. 6 (5th Cir. 2000). Consequently, when it appears a more careful or detailed drafting might overcome the deficiencies on which dismissal is sought, a Court must allow a plaintiff the opportunity to amend the Complaint. *Hitt v. City of Pasadena*, 561 F.2d at 608–09.

Discussion

Berrocal’s responses to Defendants Great Northwest Community Improvement Association, Inc., Pinkey Clinkscases, Leon Valley Police Department and Leon Valley Police Chief David Gonzalez’s Motions to Dismiss (*ECF Nos. 52 and 53*) were due December 19, 2023. Berrocal’s response to Defendant Google Fiber LLC’s Motion to Dismiss (*ECF No. 59*) was due January 3, 2024. Because Berrocal did not file responses, this Court ordered he respond on or before February 1, 2024, and admonished Berrocal that “failure to respond may result in the motions being considered as unopposed.” *ECF No. 65*. On January 30, 2024, Defendant Joe Gonzalez filed a Motion to Dismiss. *ECF No. 67*.

Berrocal did not file any response to the Motions to Dismiss. Instead, on February 14, 2024, Berrocal filed an Advisory, which the Court construed as a Motion to Stay the Case. *ECF No. 68*. The Court granted a stay in this case until April 8, 2024. *ECF No. 76*. The Court indicated it would consider an additional stay if Berrocal filed a motion explaining (a) the basis for his incarceration; (b) the specific obstacles he faces to proceeding on this matter while in custody;

and (c) the specific length of stay requested, along with the reasons for the requested length of stay. *Id.* at p. 2. Berrocal filed a document on April 3, 2024, which addressed the obstacles he faced to proceeding with the case while incarcerated, but did not explain either the basis for his incarceration or the length of any additional stay, and did not actually request a stay at all. *ECF No. 77*. In light of Berrocal's filing, the Court lifted the stay in this case but ordered him to respond to the pending Motions to Dismiss on or before May 31, 2024. *ECF No. 78*. Berrocal did not respond.

Because the Berrocal failed to respond to the pending Motions to Dismiss, even after being given two additional opportunities and after being admonished of the consequences, this Court will GRANT the Motions to Dismiss as unopposed pursuant to Local Rule CV-7(d)(2). This Court will not exercise its discretion to address the substantive merits of the Motions to Dismiss. Even upon review, the Court concludes it appears a more careful or detailed drafting will not overcome the deficiencies on which dismissal is sought. Therefore, the Court will not provide Berrocal another opportunity to amend the Complaint. *Hitt v. City of Pasadena*, 561 F.2d at 608–09.


Conclusion

The Court **GRANTS** Defendants Great Northwest Community Improvement Association, Inc., Pinkey Clinkscalses, Leon Valley Police Department, Leon Valley Police Chief David Gonzalez, District Attorney Joe Gonzales, and Google Fiber LLC's Motions to Dismiss. *ECF Nos. 52, 53, 59, 67*.

The Court finds good cause to lift the stay and return the case to the Court's active docket. Accordingly, the Court hereby **LIFTS** the stay.

It is so ORDERED.

SIGNED this 7th day of October, 2024.



A handwritten signature in blue ink, reading "Jason Pulliam", is written over a horizontal line. Below the line, the name and title are printed in black capital letters.

JASON PULLIAM
UNITED STATES DISTRICT JUDGE